

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-477
December 23, 1997

TIDEWATER TELECOM
Request for Designation of Eligible
Telecommunications Carrier

ORDER CLARIFYING
SERVICE AREA

WELCH, Chairman; NUGENT and HUNT, Commissioners

By this Order, we clarify our November 3, 1997 Order in this Docket, and designate Tidewater Telecom, Inc.'s (Tidewater) current study area (as defined by the Federal Communications Commission (FCC)) as its service area for eligible telecommunications carrier (ETC) purposes.

On December 3, 1997, the Telephone Association of Maine (TAM), on behalf of Tidewater, submitted a letter asking the Commission to clarify the text and an ordering paragraph of our November 3, 1997 Order in this Docket dealing with "jointly served" study areas.¹ Tidewater believes that the intent of the November 3, 1997 Order is to designate the FCC study area, currently consisting of Tidewater's service territory and the service territory of Lincolnville Telephone Company's (Lincolnville), an affiliate of Tidewater,² as a single service area. (Tidewater and Lincolnville have separate and independent service territories that do not overlap.)

¹ *The text the Company refers to reads as follows:* "Several Maine local exchange carriers have study areas consisting of noncontiguous exchanges, or jointly serve a portion of a study area. In Tidewater's case, any noncontiguous or jointly served exchanges are in close proximity and designating the Company's entire study area as a single service area meets the TelAct's universal service goals." *The Ordering paragraph in question reads as follows:* "2. That Tidewater Telecom's entire study area is designated a single service area;[.]"

² See Federal Communications Commission, Memorandum Opinion and Order, DA 97-238 (AAD96-70), Released 2/3/97. In this Order the FCC allowed the two affiliated companies to combine their study areas for jurisdictional separations purposes.

The original intent of our November 3, 1997 Order was to divide Tidewater's study area into two service areas with borders that were coterminous with the current state-authorized separate service territories of Tidewater and Lincolnville. Our determination was based upon language in Paragraph 191 of the FCC's May 8, 1997, Report and Order on Universal Service, FCC 97-157, (FCC Order) which appeared to reject the possibility of two carriers cooperating with each other to serve throughout one service area. Given the fact that neither Tidewater nor Lincolnville serves its entire study area, the Commission believed it could not certify them as joint ETCs for one service area and that it was necessary to divide their study area into two separate service areas.

Upon reconsideration of our decision and further review of the comments cited in Paragraph 191 of the USF Order, the Commission finds that the FCC intended only to prohibit unaffiliated, competing carriers from cooperating to provide service throughout one service area. Paragraph 191 cites comments submitted by Cox Communications which appear to concern unaffiliated cable companies, a situation wholly distinguishable from the situation where Tidewater and Lincolnville are affiliated companies.

Further, as noted in footnote 2 above, it was the FCC which granted Lincolnville and Tidewater permission to form a "joint study area." Unfortunately, the FCC does not appear to have considered the "joint study area" issue when drafting the USF Order, thus leaving this Commission to resolve the conflicting directives contained in the USF Order and the Telecommunications Act of 1996 (Act). Specifically, Section 214(e)(1) of the Act "requires an eligible carrier to provide service 'throughout' a service area." This would appear to preclude any dual ETC designations for a joint study area where the two companies do not each serve the entire area. However, Section 214(e)(5) of the Act states that in the case of an area served by a rural telephone company, "'service area' means such company's 'study area' unless and until the Commission and the States . . . establish a different definition of service area." The USF Order finds that "retaining the study areas of rural telephone companies as the rural service areas is consistent section 214(e)(5) and the policy objectives underlying section 254." USF Order at ¶ 189. These directives clearly do not contemplate the existence of "joint study areas" and make it extremely difficult for this Commission to reach a final determination.

Moreover, as a practical matter, if the Commission decides to change the study area boundaries, it will need to petition the FCC for concurrence, a process which may take nearly four months. USF Order at ¶ 188. In the meantime, it is unclear, from both

the Order and discussions our Staff has had with members of the FCC Staff, whether Tidewater and Lincolnville would continue to receive USF funds during the pendency of the petitions. Given the potential for a lag in funding due to the pendency of a petition, the Commission believes that the most prudent course of action at this time is to designate Tidewater and Lincolnville as ETCs for their joint study area, pursuant to our interpretation of the USF Order discussed above, and to make a determination regarding the division of the joint study area during 1998.

Accordingly, we

O R D E R

That Tidewater's service area consists of its study area.

Dated at Augusta, Maine this 23rd day of December, 1997.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Hunt

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

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